

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 245

WATERMAN STEAMSHIP CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

1. This income tax case involves the determination of petitioner's cost basis for depreciation of eighteen vessels purchased by it from the United States and whose sales prices were later adjusted pursuant to the Merchant Ship Sales Act of 1946, c. 82, 60 Stat. 41 (50 U.S.C. Appendix 1952 ed., Sec. 1735, *et seq.*).¹

At various times during the years 1942 through 1946 petitioner Waterman Steamship Corporation purchased eighteen vessels from the United States Maritime Commission (now the Maritime Administration). Upon receiving sixteen of the vessels, Waterman chartered them to the United States until

¹ The pertinent portions of the Merchant Ship Sales Act are set out at pages 12-20 of petitioner's Appendix.

various dates in 1946. The government paid charter hire to Waterman. Waterman reported the receipts as income on its federal income tax returns for the years 1942 through 1946, and deducted depreciation for the eighteen vessels.

On March 8, 1946, Congress enacted the Merchant Ship Sales Act of 1946 ("the Act"). Section 4 gave citizens of the United States the right to purchase from the United States war-built vessels at the statutory sales price defined in Section 3(d). Section 9 of the Act provided the opportunity, upon application, for those who had purchased vessels from Maritime prior to the Act to have their purchase prices adjusted downward to the statutory sales price. The adjustment was to be made by treating the parties as if the applicant-purchaser had bought the vessel on the date of the Act rather than earlier.

In addition, Section 9 calls for an unwinding of all the effects of the earlier transaction between the parties. By means of credits in favor either of Maritime or the applicant, the parties are restored to the positions they would have occupied if: (1) Maritime had not paid the applicant charter hire for use of the ship before the date of adjustment of its price; (2) the applicant had not paid taxes on these amounts; (3) the applicant had been paid charter hire for the ship it traded in when it bought another from Maritime; (4) the applicant had received interest on the additional funds it invested, *etc.*

Waterman applied for and was allowed adjustments of the sales prices of the eighteen vessels to conform

to the statutory sales prices under the 1946 Act. The amounts credited to Waterman were reduced, however, by the net amounts Waterman owed Maritime as a result of the unwinding of all transactions that would not have taken place if the vessels had in fact been purchased at the later date. The issue in dispute is whether, for tax purposes, Waterman's cost bases for the eighteen vessels are, as the government contends, the statutory sales prices under the 1946 Act or are, as taxpayer argues, the original costs of these vessels less the amounts refunded to it under the Act.

The Fifth Circuit, Judge Cameron dissenting, held that the intent of Congress was that pre-Act and post-Act purchasers should have the same tax basis for their ships, namely, the statutory sales price. Thereafter, the Third Circuit, affirming the District Court for the District of Delaware (*National Bulk Carriers, Inc. v. United States*, 214 F. Supp. 585 (1963) (Pet. App. 36-50)), reached the same result. *National Bulk Carriers, Inc. v. United States*, 331 F. 2d 407 (1964) (Pet. App. 51-60). (National Bulk has filed an essentially identical petition for certiorari (No. 246).) Prior to these decisions, the Court of Claims had reached the opposite result. *Socony Mobil Oil Co. v. United States*, 287 F. 2d 910 (1961), rehearing denied, 289 F. 2d 326 (1961) (Pet. App. 61-69).

2. The precise issue involved in these cases is again and presently before the Court of Claims. *Keystone Tankship Corp. v. United States*, Docket No. 240-61, argued on January 15, 1964, is awaiting decision.²

² The next decision day of the Court of Claims is October 16, 1964.

Other pending cases known to involve this issue are *Moore-McCormack Lines, Inc. v. United States* (Ct. Cl.), Docket No. 286-62; *Moore-McCormack Lines, Inc. v. United States* (Ct. Cl.), Docket No. 154-254-64; *Moore-McCormack Lines, Inc. v. Commissioner* (T.C.), Docket No. 2887-62 (awaiting decision); and *United States Lines Co. v. Commissioner* (T.C.), Docket No. 1247-62. While we have been unable to determine the precise amounts involved with respect to all affected shipowners, the question apparently retains substantial importance. The sales prices of 179 vessels were adjusted under the Merchant Ship Sales Act. At the time of adjustment, a difference of approximately \$35,500,000 in basis for depreciation turned on the issue in this case. Since depreciation is an annually recurrent deduction over the life of a ship, the depreciation deduction on many of these ships for a number of open years will depend on the issue on which the Court of Claims and the court below have split. Thus, although this issue is not one of lasting importance in the administration of the revenue laws, it substantially affects a number of taxpayers and involves a large amount of revenue.

3. We suggest that action on this petition and that in *National Bulk* be deferred for a reasonable time pending the outcome of the *Keystone Tankship* case awaiting decision in the Court of Claims. If the Court of Claims adheres to its former position, the writ should be granted, because there is a direct conflict between the Court of Claims and the Fifth and Third Circuits and it appears that there is a substantial body of pending and forthcoming litigation in-

volving the issue. On the other hand, if the Court of Claims reverses its position, there will then be no conflict and thus no need for review by this Court. If this disposition is adopted, we will inform the Court promptly of the decision in *Keystone Tankship*.

Respectfully submitted,

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